

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0273/P1dn
TKK:kjf:ph

November 7, 2008

ATTN: Rep. Kaufert and Anthony Driessen:

As requested in the e-mail correspondence and attachments from Mr. Driessen dated September 11 and 12, 2008, this bill makes numerous changes to the statutes regulating massage therapists and bodyworkers. Please review the draft carefully to ensure that I have accomplished your intent. I have a number of questions:

I. Examining Board. The drafting instructions direct me to establish a massage therapy or bodywork therapy board. However, for the following reasons, this draft establishes a Massage Therapy and Bodywork Therapy Examining Board.

Chapter 15 governs the structure and power of executive branch agencies and subunits within the agencies, including part-time regulatory and advisory bodies such as examining boards and councils. The rule-making and credentialing powers, among other powers, granted in this draft to the Massage Therapy and Bodywork Therapy Examining Board fit within the parameters of examining boards as defined under s. 15.01 (7) and described under s. 15.08.

Although there is precedent for the creation of boards within the regulation and licensing chapters (see, for example s. 15.405 (3), (10r), and (11), creating the Auctioneer Board, the Real Estate Appraisers Board, and the Real Estate Board, respectively), none of these boards have rule-making or credentialing powers as would the Massage Therapy and Bodywork Therapy Examining Board.

Let me know if you have any questions about this approach.

II. Exemptions from certain licensure requirements. Temporary transitional provisions that will not extend beyond July 1 of the even-numbered year of the legislature's next session (July 1, 2012) are generally placed in the nonstatutory sections. For that reason, I placed the short-term exemptions from the licensing requirements proposed for s. 460.05 (3) in a nonstatutory provision. Let me know if this is a problem.

III. Appointment of members of the examining board. What does it mean that one member "shall be a representative of a massage therapy or bodywork therapy program offered by a public entity"?

IV. Exceptions to licensure. I have a couple of questions on this point:

A. I restructured the exceptions proposed in the sample draft for s. 460.03 (3) (a) and (b) to conform to LRB drafting conventions. I also separated out the different “movement therapies” into proposed s. 460.03 (4). Finally, rather than listing in the statutes variations of movement therapies which may change and multiply, such as Rolfing Structural Integration, the Rolf Method of Structural Integration, and the Rolf Institute’s Rolf Movement Integration, I require the Examining Board to identify, by rule, those movement therapies for which certification is an exception to licensure under this chapter.

Is this approach acceptable?

B. What are “energy systems” and “acupoints”? Can the following definition of “acupuncture points” be used in proposed s. 460.03 (4) (a) 2., stats., instead of these two terms: “specific areas of the human body known as acupuncture points or meridians”?

C. What is “structural integration”?

V. Duties of the examining board.

A. The drafting instructions replace the word shall with may under s. 460.04 (1). In general, use of the word “may” indicates a discretionary power, rather than a duty. Because the examining board will not be required to assign a unique license number to persons licensed under the chapter, I renumbered this provision s. 460.05 (5). Okay?

B. I moved language regarding the examining board’s duty to promulgate rules governing the examination on state laws and administrative rules from s. 460.06 to s. 460.045 (7), stats. A new subsection, s. 460.06 (2), stats., requires the examining board to prepare, conduct, and grade the examination required under this subsection. Okay?

VI. Examination. The suggested amendments to s. 460.06, stats., eliminate the references to national certification of both the examination required for licensure and the administrator of that examination.

A. In the absence of such national certification, what does it mean that the examination meets “generally accepted psychometric principles and standards”? Specifically, generally accepted by whom? And what are psychometric principles and standards?

B. Should the examining board be required to approve the “generally accepted” examination taken by applicants for licensure?

VII. Temporary licenses. Because of the way Chapter 460 is structured, I created a separate section for temporary licensure, rather than including this information under s. 460.02. See proposed s. 460.08, stats. The examining board is directed under s. 460.045 (6), stats., to promulgate rules applicable to temporary licenses. Are these changes acceptable?

Do you want to specify in the statutes minimum standards that an applicant for a temporary license must meet, rather than leaving the determination of these standards entirely to the examining board?

VIII. School and instructor requirements. The bill creates new requirements for schools and instructors located in Wisconsin. I have the following questions about these new requirements:

A. As drafted, these requirements apply to “massage therapy or bodywork therapy” schools rather than just “massage therapy” schools. Okay?

B. The requirements appear to conflict with (or, at the least, are not harmonized with) the requirement under s. 460.05 (1) (e) 1., stats., that a person seeking a license graduate from “a school of massage therapy or bodywork therapy approved by the Educational Approval Board under s. 38.50.”

1. Is it necessarily true that a school approved by the Educational Approval Board under s. 38.50, stats., will satisfy the requirements imposed under proposed s. 460.095, or vice versa?

2. Did you intend these new requirements to replace the requirement that a school be approved by the Educational Approval Board?

C. Proposed s. 460.095 (1) requires schools to “certify to the board that their graduates have passed the state jurisprudence exam that is required by s. 460.06.” I have several questions about this instruction:

1. I assumed that what you referred to as the “state jurisprudence exam” is the examination required under proposed s. 460.06 (2) that covers state laws and administrative rules. Is that correct?

2. I wonder why this is a requirement of the schools when passing the examination is already required of an applicant for licensure? (See proposed s. 460.06 (2), which now provides that no person may be licensed unless the person has passed this examination). Unless, by this language you want to require students of massage therapy and bodywork therapy to pass this examination before they may graduate (obtain a degree) from a massage therapy or bodywork therapy school in Wisconsin?

3. Are you requiring the school to administer the examination? If not, how can the schools certify that their graduates have passed the examination? If so, this conflicts with the language I propose under s. 460.06 (2), which requires the examining board to prepare, conduct, and grade this examination. Of course I can change proposed s. 460.06 (2).

In this draft, the examining board is required to administer the examination and the massage therapy and bodywork therapy schools must provide a course for their students that addresses the material to be included on the examining board’s examination. Are you comfortable with this approach?

D. The language proposed in the drafting request governing standards that must be met by instructors at massage therapy schools is somewhat vague and may not necessarily ensure that the instructors have relevant training. For example, a person with “professional training and experience in a health related field and two years of experience” could be a person who completed coursework in hospital administration and has worked for two years in a clinic dealing with information technology. Similarly, a person with two years of post-secondary education and training could have taken a program of study in early childhood education or accounting or even photography. And because professional is not a defined term, a “practicing professional” need not

necessarily be a massage therapist or bodywork therapist, but could be a photographer or chef.

I did not include the language proposed in the drafting request for s. 460.095 (2) (a) 1. and 2. and (b) 1. and 2. I recommend that more specific language be prepared for these subdivisions; language which identifies, if possible, degrees or experience that the instructor must have completed in order to satisfy this instructor requirement. To the extent that you do not wish to specifically identify degrees or experience in the statutes, I recommend that you require the examining board to establish such specific requirements by rule.

You may wish to review the requirements for persons providing practical instruction at barbering and cosmetology schools under s. 440.63, stats. Let me know which approach you would like to take.

E. Must schools located outside of Wisconsin meet any (minimum) requirements in order for a person who graduates from such a school to be eligible to obtain a license in Wisconsin? As drafted, there is no such requirement under s. 460.09, stats.

F. Did you want the examining board to engage in any formal review of schools and instructors to determine whether the schools and instructors satisfy the requirements imposed under this new section, or to enforce compliance with this section? As drafted, there is no such review or enforcement.

IX. Advertising. The drafting instructions propose the addition of "Except as provided in 460.03 (1) and (2)" to s. 460.13, stats. I am not clear why the change is proposed, and this additional language does not appear in this draft.

Sections 460.03 (1) and (2) provide exceptions to licensure and do not address advertising in any way. Section 460.13 by its terms only applies to persons holding a license under Chapter 460. Under current law, a person who falls within one of the exceptions under s. 460.03 (1) and (2) may (already) advertise that he or she practices massage therapy or bodywork therapy.

Is it your intent that persons who are not licensed under this chapter but who fall within one of the exceptions under s. 460.03 (1) and (2) be prohibited from advertising that they practice massage therapy or bodywork therapy? If so, s. 460.13, stats., will need to be reworked to apply to persons other than license holders. Or am I missing something?

X. Effective Date. Did you wish to establish a delayed effective date to provide for the establishment of the examining board and the promulgation of administrative rules?

I look forward to working with you on the next draft.

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